

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7373

Joint Petition of Vermont Electric Power Company, Inc.,)
Vermont Transco, LLC, and Central Vermont Public)
Service Corporation for a certificate of public good,)
pursuant to 30 V.S.A. Section 248, authorizing the)
construction of the Southern Loop Transmission)
Upgrade Project)

Order entered: 2/8/2008

ORDER RE: MOTIONS TO INTERVENE AND
MOTION TO ADMIT PRO HAC VICE

In this Order, the Vermont Public Service Board ("Board") addresses requests to intervene from the following persons and entities:

Conservation Law Foundation ("CLF");
the Windham Regional Commission ("WRC");
Town of Brookline;
Town of Dummerston;
Town of Newfane;
Town of Townshend;
Town of Brattleboro;
Town of Cavendish;
Vermont Public Power Supply Authority ("VPPSA");
ISO New England, Inc. ("ISO-NE"); and
the Vermont Land Trust ("VLT").

In addition, the Board rules upon ISO-NE's motion to admit pro hac vice Anthony M. Macleod, Esq.

We address each of these motions below. However, we note that a number of the moving parties are representing themselves. In addition, several of the organizations seeking to intervene

also have representation from non-attorneys. These parties are reminded that, even though we make efforts to enable participation by non-attorneys, they are still required to adhere to all of the Board's Rules of Practice. This includes the requirement that all documents be served on all other parties to the proceeding.

This proceeding has a large number of parties. We encourage parties with similar interests to work together in the preparation of testimony and discovery and the examination of witnesses. To reduce duplicative testimony and examination, the Board also has the authority to require parties to join with other parties "with respect to appearance by counsel, presentation of evidence or other matters." We do not impose any such requirements at this time, but may in the future if the "interests of justice and economy of adjudication require."¹

CLF

CLF states that it is a private, non-profit environmental organization dedicated to the protection and responsible use of New England's natural resources. CLF asserts that it has an interest in whether the proposed project: will unduly interfere with the orderly development of the region; is required to meet the present and future electric demand; will result in an economic benefit; will have an undue adverse effect on aesthetics, the environment, and public health and safety; and complies with the state energy plan, state energy and regulatory policies, and requirements for least-cost integrated resource planning.

Carl Ferenbach, III, and Judy W. Ferenbach support CLF's intervention request.

Vermont Electric Power Company, Inc., and Vermont Transco, LLC (collectively "VELCO"), and Central Vermont Public Service Corporation ("CVPS" and, with VELCO, "Petitioners") do not object to the Board granting conditional, permissive intervention to CLF, with such intervention to be limited to the specific interests identified in CLF's motion.

We grant CLF's motion to intervene, on a permissive basis under Rule 2.209(B). CLF's intervention is limited to the interests that it identified in its motion.

1. Board Rule 2.209(C).

WRC

WRC filed a petition to intervene in which it identifies its interests as related to Section 248 criteria (b)(1)(orderly development), (b)(2)(need), (b)(3)(system stability and reliability), (b)(4)(economic benefit), (b)(5)(aesthetics and environment), and (b)(7)(compliance with electric plan).

No party filed comments on WRC's intervention.

We grant WRC's intervention request on a permissive basis limited to the interests that it has identified in its intervention request.

Brookline

The Town of Brookline states that its interests in this Docket involve criteria b(1)(orderly development), (b)(2)(need), (b)(4)(economic benefit), (b)(5)(aesthetics. environment, and public health and safety), and (b)(7)(compliance with electric plan)

The Petitioners do not object to the Board granting permissive intervention to Brookline on the basis of the issues identified in Brookline's motion.

We grant the intervention of the Town of Brookline on a permissive basis limited to issues related to the interests it has identified in its intervention request.

Dummerston

The Town of Dummerston states that its interests in this Docket relate to criteria (b)(1)(orderly development), (b)(2)(need), and (b)(5)(aesthetics. environment, and public health and safety).

No party filed comments on the Town of Dummerston's intervention.

We grant the intervention of the Town of Dummerston on a permissive basis limited to issues related to the interests it has identified in its intervention request.

Newfane

The Town of Newfane filed a petition to intervene in which it identifies its interests as related to criteria (b)(1)(orderly development), (b)(2)(need), (b)(4)(economic benefit), (b)(5)(aesthetics. environment, and public health and safety), and (b)(7)(compliance with electric plan).

No party filed comments on the Town of Newfane's intervention.

We grant the intervention of the Town of Newfane on a permissive basis limited to issues related to the interests it has identified in its intervention request.

Townshend

The Town of Townshend asserts that it has interests related to criteria (b)(1)(orderly development), (b)(2)(need), (b)(4)(economic benefit), (b)(5)(aesthetics. environment, and public health and safety), and (b)(7)(compliance with electric plan).

No party filed comments on the Town of Townshend's intervention.

We grant the intervention of the Town of Townshend on a permissive basis limited to issues related to the interests it has identified in its intervention request.

Brattleboro

In its motion to intervene, the Town of Brattleboro notes that it has not yet determined how it wishes to participate in this proceeding, but as an initial determination, has identified interests related to criteria (b)(1)(orderly development), (b)(2)(need), (b)(4)(economic benefit), and (b)(5)(aesthetics. environment, and public health and safety). The Town of Brattleboro states that, within these criteria, its concerns and interests include wildlife habitat, the natural environment, herbicide use, impacts on property values, economic benefit to its residents and businesses, aesthetic impacts, and public health and safety.

The Petitioners do not object to the Board granting permissive intervention to the Town of Brattleboro on the basis of the issues identified in its motion.

We grant the intervention of the Town of Brattleboro on a permissive basis limited to issues related to the interests it has identified in its intervention request.

Cavendish

The Town of Cavendish asserts that its interests in this proceeding are broad, and that its "special areas of interest" include aesthetics, environmental impacts, health issues, noise, impacts on local infrastructure including roads, and impacts on properties.

No party filed comments on the Town of Cavendish's intervention.

We grant the intervention of the Town of Cavendish on a permissive basis limited to issues related to the interests it has identified in its intervention request.

VPPSA

VPPSA notes that it provides services, including power supply and resource planning services, to the municipal electric utilities that are its members. VPPSA contends that this proceeding involves a project of significant size and scope that has potential economic impacts on the VPPSA member systems under tariffs and agreements.

The Petitioners do not object to the Board granting permissive intervention to VPPSA relating to the issues identified in its motion.

The Ferenbachs filed comments stating that VPPSA has only shown an interest in criteria (b)(1), (2), (3) and (7), and thus its intervention should be limited to those issues.

We conclude that the Ferenbachs are correct in claiming that VPPSA has not demonstrated an interest beyond those enumerated in the Ferenbachs' comments. We grant the intervention of VPPSA on a permissive basis limited to its interests related to criteria (b)(1), (2), (3) and (7).

ISO-NE

ISO-NE states that it is responsible for the reliable operation of the bulk electric generation and transmission system in New England, and that the proposed Southern Loop will have a significant impact on electric system reliability in Vermont and New England.

With its motion to intervene, ISO-NE submitted a motion to admit pro hac vice Anthony M. Macleod, Esq.

The Petitioners do not object to the Board granting permissive intervention to ISO-NE relating to the issues identified in its motion.

The Ferenbachs filed comments stating that ISO-NE has only shown an interest in criteria (b)(3) and (7), and thus its intervention should be limited to those issues.

In a response to the Ferenbachs' comments, ISO-NE contends that the Ferenbachs lack standing to seek limitations on ISO-NE's participation. ISO-NE further asserts that it is responsible for the regional transmission planning process and, consequently, that it has an interest in criterion (b)(2).

The Ferenbachs filed a reply to ISO-NE's response in which they claim that ISO-NE has not shown that its interests related to criterion (b)(2) are not already adequately represented. The Ferenbachs reiterate their position that ISO-NE's intervention should be limited to criteria (b)(3) and (7).

We conclude that ISO-NE has provided a sufficient demonstration to support permissive intervention on issues related to criteria (b)(2), because ISO-NE has shown that it occupies a unique role, and bears unique responsibilities, for New England's bulk generation and transmission system. Therefore, we grant the intervention of ISO-NE on a permissive basis limited to the interests it has identified related to criteria (b)(2), (3) and (7). We also grant ISO-NE's motion to admit pro hac vice.

VLT

VLT states that it is the owner in fee of two properties, and holds perpetual conservation easements on five properties, upon which VELCO proposes to clear additional right-of-way and erect structures. VLT asserts that the properties include important natural, scenic, recreation, forestry and agricultural resources, and that the proposed clearing on the lands will, or has the potential to, affect significant natural communities, timber rights and forest management plans, landowner qualification for the state's Current Use program, and recreation and vehicle access. For those reasons, VLT contends that it has interests in criteria (b)(1)(orderly development) and (b)(5)(aesthetics and environment).

The Petitioners object to the Board granting intervention to VLT. The Petitioners contend that VLT does not satisfy the criteria for intervention as of right under Board Rule 2.209(A). The Petitioners further assert that VLT has not met the requirements for permissive intervention under Board Rule 2.209(B). According to the Petitioners, VLT has identified neither its specific and particularized property interests, nor how the proposed project would affect those interests. The Petitioners contend that, consistent with the Board's ruling in a prior Section 248 proceeding concerning a transmission line, VLT must provide the following information:

- (1) the location of the individual's property in relation to the proposed project;
- (2) a description of the specific and particularized interest that the individual seeks to assert in this proceeding, with a demonstration that the individual's interest may be affected by the outcome of this proceeding;
- (3) an explanation of whether the individual's specific and particularized interest will be adequately protected by other parties; and
- (4) a demonstration that the individual's participation will be related to the issues subject to review under 30 V.S.A. § 248.²

The Petitioners contend that VLT must also provide a more specific description of its property interests at each location, because, according to the Petitioners, subsequent conservation easements or restrictions cannot impair VELCO's preexisting, broad easement rights.³ The Petitioners further assert that none of the interests that VLT sets forth in its motion relate to the issues properly within the scope of review under Section 248. Finally, noting that VLT seeks to participate through a pro se representative, the Petitioners assert that if VLT is granted intervention, it must comply with Board Rule 2.201(B), which addresses pro se appearances.

We do not rule on the intervention of VLT at this time. Instead, VLT must provide, within fifteen days of this Order, the following information: the specific locations of its property interests and a specific description of those interests at each location; an explanation of how those interests will be affected by the proposed project; and a demonstration that VLT's

2. Docket No. 6860, Order of 9/17/03 at 5.

3. The Petitioners also filed a related Motion in Limine which the Board will address in a subsequent order.

participation will be related to the issues subject to review under 30 V.S.A. § 248. Any responses to VLT's submission must be filed within one week of the VLT submission.

As for the Petitioners' comments regarding VLT's pro se representation, several other intervenors are also appearing through pro se representatives. As we noted at the outset of this Order, all parties and their representatives must comply with the Board's Rules of Practice.

SO ORDERED.

Dated at Montpelier, Vermont, this 8th day of February, 2008.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: February 8, 2008

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)